

**Congress of the United States**  
**Washington, DC 20515**

May 8, 2019

The Honorable Margaret Weichert  
Acting Director  
U.S. Office of Personnel Management  
1900 E Street, NW  
Washington, D.C. 20415

Dear Acting Director Weichert:

We write to you to express strong concern regarding the proposed changes to the Office of Personnel Management's (OPM) hiring practices that would require prospective federal employees and contractors to disclose their participation in pretrial diversion programs.<sup>1</sup>

A conviction history is a significant obstacle to obtaining gainful employment. Research has shown that a criminal record makes an employer almost half as likely to call an applicant back, and the effect is even more dramatic if the person seeking employment is a person of color.<sup>2</sup> This has led to unemployment rates of over 27% for formerly incarcerated individuals.<sup>3</sup> For the aforementioned reasons, diversion programs are essential to breaking cycles of incarceration - a conclusion that has strong, bipartisan support.

Statutory pretrial diversion is well established in 48 states and the District of Columbia<sup>4</sup> and is designed to offer non-violent offenders a second chance to avoid the collateral consequences of conviction and the stigma of a criminal record. Once a diversion program has been successfully completed, there is no conviction. That is especially important as convictions can sometimes carry lifetime consequences of unemployment.<sup>5</sup> A federal hiring inquiry into an applicant's participation in a diversion program defeats the very purpose of these programs. At a time of growing consensus regarding the need to prioritize rehabilitation and reintegration for individuals who have touched the criminal justice system, OPM should be moving to reduce—rather than increase—barriers to employment.

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<sup>1</sup> See 84 Fed. Reg. 5733 (February 22, 2019)

<sup>2</sup> Wharton School of Public Policy, CRIMINAL RECORDS AND UNEMPLOYMENT: THE IMPACT ON THE ECONOMY, (August, 2017), (<https://publicpolicy.wharton.upenn.edu/live/news/2071-criminal-records-and-unemployment-the-impact-on>)

<sup>3</sup> Shannon, S.K.S., Uggen, C., Schnittker, J. et al. Demography (2017) 54: 1795. (<https://doi.org/10.1007/s13524-017-0611-1>)

<sup>4</sup> NCLS, Pretrial Diversion Programs, (Sept, 2017), (<http://www.ncsl.org/research/civil-and-criminal-justice/pretrial-diversion.aspx>)

<sup>5</sup> ACLU of Kansas, CHOOSING INCARCERATION: KANSAS PROSECUTORS' REFUSAL TO USE DIVERSION AND THE COST TO COMMUNITIES, Dec. 2017 (updated Jan. 2018), ([https://www.aclukansas.org/sites/default/files/field\\_documents/choosing\\_incarceration\\_-\\_aclu\\_report\\_on\\_diversion\\_in\\_kansas\\_-\\_updated\\_january\\_2018\\_0.pdf](https://www.aclukansas.org/sites/default/files/field_documents/choosing_incarceration_-_aclu_report_on_diversion_in_kansas_-_updated_january_2018_0.pdf))

OPM's current Federal Hiring Questionnaire limits its inquiries to incarceration, probation, and parole. Requiring applicants to make an admission about pretrial diversion is a significant departure from this practice, and it runs counter to the administration's goal to "unite around prison reform legislation that will reduce crime while giving our fellow citizens a chance at redemption."<sup>6</sup> With one in three Americans possessing a criminal record, access to the workforce is already difficult for a significant number of people. That access should not be impeded further by the federal government, which currently employs 2.1 million people.<sup>7</sup>

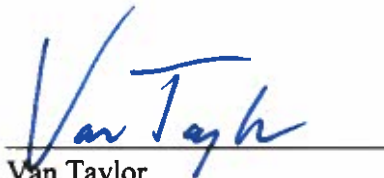
America is a country of second chances, and a mistake should not leave an individual with a lifetime sentence of unemployment and instability. Too often we have seen that one single blemish on a person's criminal record can obstruct their ability to support themselves, their families, and their communities. We are turning the corner and there is broad, bipartisan support to help people reenter the economy and their community with the supports they need to succeed. Diversion programs that provide mental, behavioral and addiction treatment are an essential and proven tool in reducing recidivism and increasing employment.<sup>8</sup>

Everyone deserves an opportunity to work for a better life. We strongly encourage OPM to immediately withdraw the proposed requirement for disclosure of diversions.

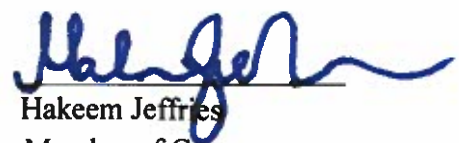
Sincerely,



David Trone  
Member of Congress



Van Taylor  
Member of Congress




Hakeem Jeffries  
Member of Congress

<sup>6</sup>White House, President Donald J. Trump Is Committed to Building on the Successes of the First Step Act (April, 2019), (<https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-committed-building-successes-first-step-act/>)


<sup>7</sup>CRS, FEDERAL WORKFORCE STATISTICS SOURCES: OPM AND OMB (March, 2019), (<https://fas.org/sgp/crs/misc/R43590.pdf>)

<sup>8</sup>The Center for Health and Justice, No Entry: A National Survey of Criminal and Justice Diversion Programs and initiatives (2013) (<http://www2.centerforhealthandjustice.org/sites/www2.centerforhealthandjustice.org/files/publications/CHJ%20Diversion%20Report%20web.pdf>)



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Gwen Moore  
Member of Congress



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Donald M. Payne, Jr.  
Member of Congress



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Adriano Espaillat  
Member of Congress




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Lucille Roybal-Allard  
Member of Congress




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Sheila Jackson Lee  
Member of Congress



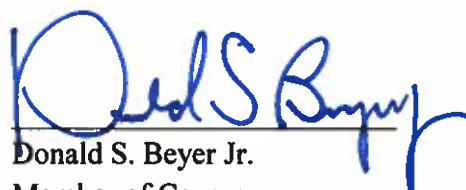
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Eleanor Holmes Norton  
Member of Congress



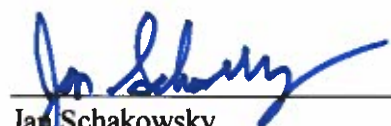
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Yvette D. Clarke  
Member of Congress




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Donald S. Beyer Jr.  
Member of Congress



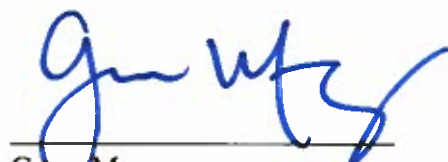
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Jan Schakowsky  
Member of Congress




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Anthony G. Brown  
Member of Congress



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Grace Meng  
Member of Congress



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Ro Khanna  
Members of Congress



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Jamie Raskin  
Member of Congress